

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 793 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 Yes
2 to 5 No

M/s. Panchal Iron & Mechanical Works

Versus

The Union of India & Ors.

Appearance:

MR NS DESAI for Petitioner

MR RP BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 18/08/98

ORAL JUDGEMENT (per R.K. Abichandani, J.)

At the hearing of this petition, it is pointed out that, though the Receiver was called upon to remain present in the office of the T.R.O. on the ground that

there was some shortfall in the interest to be paid, nothing transpired thereafter. The partners of the petitioner firm were declared insolvent on 29.11.1973. It is stated that they were thereafter discharged. It is submitted that the dues of the Income Tax Department which were listed at Item 36 in the list of creditors were of Rs. 68,620/- as noted in column 4 thereof and were paid up as per the remark in Col. 7 in the insolvency proceedings No. 1 of 1972.

2. According to the Department, even if the petitioners were discharged, in view of the provisions of sec. 44 of the Provincial Insolvency Act, 1920, an order of discharge would not release the insolvent from any debt due to the government which means that if any income tax dues are outstanding under the Income-tax Act, they would be still payable notwithstanding the discharge of the insolvents. The moot question remains whether there was in fact a shortfall of interest to be paid and that question, as it appears from the present record and the statement on behalf of the Department, does not appear to have been decided finally. It is not possible on the present set of record for this court to come to any conclusion as to whether there was any shortfall of interest. The matter was still to be decided by the T.R.O. and the Receiver could have convinced the T.R.O. that there were no such shortfall. Since the liability of the petitioners continues even after their discharge, if there are any outstanding dues of the State, they would be payable to the government. The petitioner has a right to participate in the proceedings if the TRO still proceeds at this late stage to go into the question for ascertaining the shortfall. It will be open for the petitioners to raise all their contentions before the concerned authority in respect of the alleged shortfall of interest as also on the question whether the petitioners can be held liable for payment of the amount if the matter has remained pending or is taken up. If the matter is not concluded already and the concerned authority of the respondents chooses to proceed further with it at this distant point of time on the question of shortfall of interest, then a fresh opportunity will be given to the petitioners enabling them to have their say in the matter. The learned counsel for the respondent authorities states that if the respondent chooses to proceed further with the matter, a proper hearing will be given to the petitioners in the matter and a decision will be taken in accordance with the law.

3. In view of this arrangement, the learned counsel for the petitioners states that the petitioners do not

press for this petition. Rule is accordingly discharged
with no order as to costs.

(hn)